



State Water Resources Control Board



Linda S. Adams

Secretary for
Environmental Protection

Division of Water Rights

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Arnold Schwarzenegger
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DEC 10 2006

Mr. Eduardo Malacon
Los Angeles Department of Water and Power
111 North Holt Street, Room 1121
Los Angeles, CA 90012

Mr. Dean Messer
California Department of Water Resources
1416 9th Street, Room 620
Sacramento, CA 95814

Dear Messrs. Malacon and Messer:

**APPLICATION FOR A 401 WATER QUALITY CERTIFICATION FOR THE CALIFORNIA
AQUEDUCT HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION
PROJECT NO. 2426, VENTURA AND LOS ANGELES COUNTY**

The State Water Resources Control Board (State Water Board) Executive Director has issued a Water Quality Certification pursuant to section 401 of the Clean Water Act for the California Aqueduct Hydroelectric Project, FERC Project No. 2426. A copy of the Water Quality Certification and a copy of the Notice of Determination from the State Water Board, as the responsible agency, are enclosed for your records.

If you have any questions, please contact Jennifer Watts at (916) 341-5397 or by email at jwatts@waterboards.ca.gov.

Sincerely,

Camilla Williams, Chief
Water Quality Certification Unit

cc: Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Alexis Strauss, Director
Water Division
US Environmental Protection Agency,
Region 9
75 Hawthorne Street
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Honorable Kimberly D. Bose
Office of the Secretary
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888 First Street, N.E.
Washington, D.C. 20426

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2493 Portola Road, Suite B
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California Environmental Protection Agency

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for the
**RE-OPERATION OF PYRAMID DAM FOR
THE CALIFORNIA AQUEDUCT HYDROELECTRIC PROJECT
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2426**

SOURCE: Piru Creek

COUNTY: Los Angeles and Ventura Counties

Introduction

The California Department of Water Resources (DWR) and the City of Los Angeles (collectively Licensee) applied to the Federal Energy Regulatory Commission (FERC) on March 17, 2005 for an amendment to the current FERC license for the reoperation of Pyramid Dam (Project), a part of the California Aqueduct Hydroelectric Project, FERC Project No. 2426. FERC Project No. 2426 includes a number of hydroelectric developments that are situated along the length of the California Aqueduct. The application for the license amendment only addresses operation of Pyramid Dam and associated impacts to the 18 mile reach of Piru Creek between Pyramid Dam and Lake Piru. Lake Piru is a non-Project facility operated by United Water Conservation District. A map of the Project vicinity is shown in Attachment A. DWR utilizes Piru Creek for conveyance of State Water Project (SWP) water to its long term contractors. Between 1996 and 2002, total annual outflow at Pyramid Lake ranged between approximately 10,000 – 70,000 acre-feet of water.

Amendments to the FERC license requested in Licensee's application include the modification of minimum flow requirements for Piru Creek below Pyramid Dam required under Article 52 and Exhibit S of the current FERC license, which require Licensee to establish and maintain a year-round trout fishery. DWR requested the license amendment to avoid incidental take of the arroyo toad (*Bufo californicus*), a species listed by the United States Fish and Wildlife Service (FWS) as endangered under the Endangered Species Act. Prior to submittal of the application for a license amendment, Licensee submitted a request to FERC for a temporary waiver from the minimum flow releases under FERC license Article 52 on February 10, 2005. FERC approved the temporary waiver on April 12, 2005. Consequently, DWR has already begun operating Pyramid Dam flow releases to simulate natural flow conditions using the same operating guidelines that will be implemented under the requested license amendment.

The DWR water right at Pyramid Dam and Lake Piru is authorized under Water Right Permit 18709 (Application 25988) issued by the State Water Resources Control Board (State Water Board) and documentation is recorded with the Division of Water Rights (Division). Water Right Permit 18709 is for year round storage of 55,000 acre-feet of water collected from Piru Creek. The beneficial uses of water identified in Permit 18709 are irrigation; domestic; municipal; industrial; water quality; recreational; fish and wildlife preservation and enhancement; and incidental power generation. Lake Piru is also designated as a point of rediversion under various permits and licenses held by DWR that authorize water to be conveyed through the California Aqueduct for distribution at various facilities.

Before FERC can issue a license amendment for the Project, Licensee must obtain water quality certification under section 401 of the Clean Water Act from the State Water Board. (33 U.S.C. § 1341.) The State Water Board must certify that the Project will comply with the applicable provisions of the Clean Water Act, including water quality standards set forth in the Water Quality Control Plan for the California Regional Water Quality Control Board, Los Angeles Region (Basin Plan). The State Water Board must analyze the overall effect of the Project license amendment on water quality and include conditions in the certification, if necessary, to adequately protect the designated beneficial uses identified in the Basin Plan.

Water Quality Certification Conditions

Operational Guidelines to Simulate Natural Hydrology

Article 52 of the current FERC license dictates a continuous minimum stream flow release below Pyramid Dam of 5 cubic feet per second (cfs) from November 16 through April 30, and 10 cfs from May 1 through November 15. This article also includes a requirement for release of additional flow up to 25 cfs from Pyramid Dam into Piru Creek, depending upon the predicted maximum air temperature in the Project area. Additional requirements related to the maintenance of stream flow for the purpose of maintaining a year-round trout fishery are contained in Exhibit S of the current license.

In 2003, FWS expressed concern about higher than natural perennial stream flows in Piru Creek and their impacts to the endangered arroyo toad population that is known to inhabit middle Piru Creek, which is the reach between Lake Piru and Pyramid Dam. These concerns included the effects of increased summer stream flows on non-native species that prey on the toads, such as bullfrogs and crayfish. Additionally, the natural scouring events that are necessary to maintain arroyo toad habitat and that would normally occur during winter storm events are prevented due to the flow management practices under the current license conditions. In communicating their concerns about impacts to arroyo toads, the FWS provided recommendations for managing water releases in Piru Creek that are compatible with survival and recovery of the arroyo toad. These recommendations have been incorporated into the operational scheme proposed by DWR in its license amendment application to FERC.

DWR will operate Pyramid Dam to reflect natural flow conditions by releasing flows from Pyramid Lake to middle Piru Creek at a rate up to approximately 18,000 cfs, which is the maximum volume of water that can be safely released from Pyramid Dam. Inflow to Pyramid Lake will be measured at existing gauging stations that are located above Pyramid Lake on upper Piru Creek and Cañada de los Alamos. A multiplier will be used to account for portions of the Pyramid Lake watershed that are not tributary to either upper Piru Creek or Cañada de los Alamos. Due to operational constraints, the stream release into middle Piru Creek at Pyramid Dam will typically lag measured inflow by approximately one day. Implementation of the proposed project will result in greater volumes of water passing through middle Piru Creek during the rainy season (typically November through April). During the dry season (May through October), flows in middle Piru Creek will gradually diminish in response to decreasing surface water inflow to Pyramid Lake. On rare occasions during dry years, inflow to Pyramid Lake may be reduced to zero.

Radial Gate Testing

Sudden increases or decreases in stream flows can be disruptive to aquatic organisms, especially when they occur during critical life history stages. For this reason, short-term increases in flow to middle Piru Creek associated with testing of the radial gates, stream release valves, or other requirements to test equipment at Pyramid Dam are prohibited between March 15 and June 15 and will be avoided to the extent possible between June 16 and July 31. Scheduled tests that require releases that last longer than 15 minutes will require prior notification to the FWS. This allows the radial gates at Pyramid Dam to be exercised, and provides for testing equipment, as mandated by FERC or other agencies, that would otherwise increase flows by up to 50 cfs for short periods of time.

Monitoring Requirements

Monitoring for federally listed threatened and endangered species and for California species of special concern within the Project area is included to better understand how implementation of the Project affects these species and will allow for collection of information about their status in middle Piru Creek. DWR will develop a monitoring plan that includes annual breeding surveys for federally listed arroyo toads and that may also include surveys for California red-legged frogs, and for two California species of special concern: Southwestern pond turtles and Two-striped garter snakes. The monitoring plan may also need to include surveys for exotic species known to occur in middle Piru Creek, such as bullfrogs and crayfish, which are known to prey upon arroyo toads.

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

1. The federal Clean Water Act (33 U.S.C. §§ 1251 *et seq.*) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Section 401 of the Clean Water Act directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project.
2. The State Water Board is the State agency responsible for certification in California. (Wat. Code, § 13160.) The State Water Board has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)
3. The California Regional Water Quality Control Boards have adopted, and the State Water Board and the US Environmental Protection Agency have approved, water quality control plans (Basin Plans) for each watershed basin in the State. The Basin Plans designate the beneficial uses of waters within each watershed basin and water quality objectives designed to protect those uses. Section 303 of the Clean Water Act requires the states to develop and adopt water quality standards. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute state water quality standards under section 303. The State Water Board has also considered the existing water quality conditions and Project related controllable factors.
4. The Los Angeles Regional Water Quality Control Board (Los Angeles Board), has adopted the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, which identifies industrial service and process supply; agricultural supply; groundwater recharge; freshwater replenishment; water contact recreation; non-contact recreation; warm freshwater habitat; cold freshwater habitat; wildlife habitat; rare, threatened or endangered species habitat; spawning, reproduction, and/or early development habitat; and wetland habitat as existing beneficial uses for Piru Creek between Pyramid Lake and Lake Piru. Additionally, municipal and domestic supply is identified as a potential beneficial use.
5. On June 12, 2008, FERC issued the final environmental assessment (Final EA) for the Project, pursuant to the requirements of the National Environmental Policy Act. The Final EA presents an evaluation of the Project, addresses potential

environmental impacts, and includes responses to comments received on the draft environmental assessment. The Final EA also includes a Finding of No Significant Impact (FONSI).

6. DWR is the lead agency for the Project for purposes of the California Environmental Quality Act (CEQA). (Pub. Resources Code, §§ 21000 *et seq.*) DWR released a Notice of Preparation of a draft environmental impact report (EIR) on May 19, 2004 and held a public scoping meeting on June 17, 2004 in Santa Clarita. DWR subsequently released a draft EIR entitled *The Simulation of Natural Flows in Middle Piru Creek* in November 2004 (State Clearinghouse No. 2004051123) and held a public comment meeting in December 2004. A Final EIR was released in January 2005. The Final EIR was certified by the Director of DWR and a Notice of Determination was filed with the State Office of Planning and Research on February 15, 2005. DWR incorporated conditions into the Project designed to protect the environment.
7. The State Water Board, as a responsible agency under CEQA, has reviewed and considered the documents produced by DWR to support the environmental review required for the issuance of the Section 401 Water Quality Certification. Although the State Water Board was not identified as a responsible agency at the time that DWR circulated the draft and the final EIR, subsequent review of the documents produced by DWR indicate that the State Water Board would not have requested significant changes had it been consulted as a responsible agency. The State Water Board will file a Notice of Determination within five days from the issuance of this certification.

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER BOARD CERTIFIES THAT THE OPERATION OF THE CALIFORNIA AQUEDUCT HYDROELECTRIC PROJECT BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE CITY OF LOS ANGELES UNDER AN AMENDED LICENSE ISSUED BY FERC will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the California Department of Water Resources complies with the following terms and conditions:

1. Pyramid Dam Stream Flow Conditions

Stream releases from Pyramid Dam into Piru Creek shall match natural inflow into Pyramid Lake to the extent operationally feasible and consistent with safety requirements, as described in the following guidelines:

- A. Natural inflow to Pyramid Lake will be released into middle Piru Creek at a rate up to approximately 18,000 cfs, which is the maximum safe designed release from Pyramid Dam.

- B. Storm releases into middle Piru Creek may be held back at less than the maximum safe designed release of 18,000 cfs if higher releases are deemed a threat to life, safety, or property at Pyramid Dam or downstream of the dam.
- C. DWR may elect to appropriate inflow to Pyramid Lake above the safe release flows under the provisions of its existing water rights.
- D. Up to 3,150 acre feet of State Water Project water may be delivered to United Water Conservation District via middle Piru Creek between November 1 and the end of February of each water year. During this period, water deliveries may be made over a period of a few days, ramping flows up and down to simulate the hydrograph of a typical storm event, or they may be released more gradually over a longer period.
- E. Radial Gate Testing

Releases into middle Piru Creek may be increased for short periods of time to exercise the Pyramid Dam radial gate and stream release valves, to test emergency power sources, to conduct tests mandated by FERC, or to meet short-term operational or maintenance requirements. No such testing will be scheduled between March 15 and June 15. Testing will also be avoided to the extent possible between June 16 and July 31. When testing is conducted, flows shall not increase by more than 50 cfs above current base flows and release events shall not last longer than 15 minutes. Scheduled tests that require larger releases or last longer than 15 minutes require prior notification to the FWS. Unscheduled releases due to equipment failure or emergency situations must be reported to the FWS no later than three business days after the event.

- F. All flow requirements of this certification are subject to temporary modification if required by equipment malfunction, emergency conditions or law enforcement activity, or critical electric system emergency beyond the control of the Licensee. The Licensee shall provide advance notification to the FWS prior to any temporary modification, when possible. If advance notification is not possible because an event is unforeseeable, Licensee shall notify the FWS no later than 48 hours from the time that any temporary modification has occurred.

2. Arroyo Toad and Sensitive Species Monitoring Condition

Within one year of issuance of the license amendment, DWR shall file with FERC a plan approved by the Deputy Director for Water Rights for annual breeding surveys of the arroyo toad in middle Piru Creek. Monitoring shall occur, at a minimum, in the lower portion of middle Piru Creek between Lake Piru and Ruby Canyon (a distance of approximately 2 to 3 miles) and shall be conducted by a qualified biologist with experience in identifying arroyo toad larvae and tadpoles. An annual

monitoring report shall be submitted to the Deputy Director by October 1 of each year that includes the results of the breeding surveys as well as flow data to document daily releases at Pyramid Dam. If three years of monitoring indicate that the arroyo toad population has shown improvement under the flow modifications identified in this certification, DWR, upon consultation with the State Water Board and FWS, may modify the monitoring frequency required to demonstrate the presence of arroyo toads.

3. This certification is contingent on compliance with all applicable requirements of the Los Angeles Board Basin Plan, except as may be modified by the specific conditions in this certification.
4. Notwithstanding any more specific conditions in this certification, the Project shall be operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act. The Licensee shall take all reasonable measures to protect the beneficial uses of water in Piru Creek.
5. Licensee must submit any change to the California Aqueduct Hydroelectric Project that affects the operation of Pyramid Dam that would have a significant or material effect on the findings, conclusions, or conditions of this certification to the Deputy Director for prior review and written approval.
6. DWR shall provide State Water Board staff access to Project sites to document compliance with this certification.
7. The authorization to operate the Project pursuant to this certification is conditioned upon payment of all applicable fees for review and processing of the application for water quality certification and administering the State's water quality certification program, including but not limited to: timely payment of any annual fees or similar charges that may be imposed by future statutes or regulations for the State's reasonable costs of a program to monitor and oversee compliance with conditions of water quality certification.
8. This certification is not intended and shall not be construed to apply to issuance of any FERC license or FERC license amendment other than the FERC license amendment specifically identified in the Licensee's application for certification.
9. This certification does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code §§ 2050 *et seq.*) or the federal Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*). If a take will result from any act authorized under this certification or water rights held by the Licensee, the Licensee shall obtain authorization for the take prior to any construction or operation of the Project. The Licensee shall be

responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this certification.

10. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
11. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
12. In response to any violation of the conditions of this certification, the State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
13. DWR must submit any change to the Project operation that would have a significant or material effect on the findings, conclusions, or conditions of this certification, to the Deputy Director for prior and written approval.
14. This certification is subject to modification upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with § 3867).
15. The State Water Board reserves authority to modify this certification if monitoring results indicate that continued operation of the Project will violate water quality objectives or impair the beneficial uses of Piru Creek.
16. The State Water Board may add to or modify the conditions of this certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
17. The State Water Board may add to or modify the conditions of this certification as appropriate to coordinate the operations of this Project and other hydrologically connected water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.

18. The State Water Board shall provide notice and an opportunity for hearing in exercising its authority under conditions 15, 16, and 17 above.



Dorothy Rice
Executive Director

Date: **DEC - 9 2008**

